

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19305
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

PROCEDURAL BACKGROUND

On December 20, 2005, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (Petitioners), denying a refund request in the amount of \$1,804 for the taxable years 2002 through 2004. The notice advised the Petitioners that if they disagreed with the refund denial by the Bureau they could petition the Tax Commission for a redetermination.

On January 27, 2006, the Petitioners filed a letter of protest that the Commission treated as a petition for redetermination. The Commission notified the Petitioners that they could meet with a Commissioner or a designee in an informal conference to discuss the deficiency determined by the Bureau, or, in the alternative, submit additional information to show why the deficiency should be redetermined. The Petitioners submitted additional information that was made part of the file; however, the Petitioners did not indicate whether or not they were requesting an informal conference. The Commission sent another letter asking the Petitioners to indicate whether or not they wanted a hearing. The Commission received a letter dated June 16, 2006, from the Petitioners' representative, wherein he acknowledged the receipt of the Commission's clarification letter and requested 'just cause' to have a hearing. The Commission decided this was a refusal by the Petitioners to have a hearing and to not recognize the Commission as having any authority to conduct a hearing. Therefore, the Commission must decide this matter based on the information contained in the

Commission's files. The Commission has reviewed the files, is advised of their contents, and now issues this decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau.

FACTUAL BACKGROUND

The Petitioners filed returns for 2002, 2003, and 2004 and did not dispute the taxes due and payable for each year including the amounts listed on their W-2(s). In the original returns the Petitioners correctly acknowledge they had income and they were domiciled in Idaho and subject to Idaho income tax laws. The Commission then received amended returns dated September 6, 2005, which showed miscalculated refund amounts for 2002, 2003, and 2004. In all of the correspondence the Commission has received, the Petitioners assert arguments commonly made by tax protestors and arguments that the Tax Commission repeatedly has addressed and rejected.

PROTESTED ISSUES

The Petitioners seek a redetermination on many grounds. Although the Petitioners filed tax returns for previous taxable years showing taxes were due, the Petitioners now believe they are not required to pay those taxes, but instead should receive a refund. Petitioners' reasons for wanting a refund are many and are not all addressed herein. However, they are all without merit and are distortions of the law. The following addresses multiple themes presented by Petitioners and are not necessarily in the same order as presented by Petitioners: (1) the term "income" should be defined as corporate profit; (2) their wages and other compensation for labor is not "income" subject to tax because they are not an elected or appointed federal employee; (3) Idaho lacks the jurisdiction to impose the individual income tax and Petitioners base this argument, in part, on the Buck Act; (4) Petitioners are "non-citizen nationals" and as such they are not subject to the taxing jurisdiction of

Idaho; (5) federal and state taxes are based on voluntary compliance; (6) the Tax Commission did not have the authority to issue a Notice of Deficiency Determination.

LAW AND ANALYSIS

State and federal courts have rejected these common tax protestor themes time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68 (7th Cir. 1986), Judge Easterbrook penned,

Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. "Tax protesters" have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

The Petitioners assert some of the same arguments discussed by Judge Easterbrook. They believe their tax obligation has somehow been eliminated despite the fact that they live in Idaho and earned a living in Idaho. Simply stated, the Petitioners' arguments are not supported by fact or law.

1. The Petitioners' Argument Misconstrues the Supreme Court Discussion about the Definition of "Income."

The Petitioners claim they are exempt from taxation under the Idaho Income Tax Act because the U.S. Supreme Court said that "income" is limited to a corporate profit. This is not what the Court said.

In Merchants' Loan & Trust Company v. Smietanka, 255 U.S. 509, 41 S.Ct. 386, 65 L.Ed. 751 (1921), the Court said that the Corporation Excise Tax Act of August 5, 1909, defined the word "income." The Court stated it was obvious that the decisions written in developing the definition of the

word "income" as used in the Corporation Excise Tax Act of 1909 has the same meaning and content in the Income Tax Acts of 1913, 1916, and 1917. This does not mean that income is only corporate profit.

2. Wages and Other Compensation for Labor Is “Income” for Income Tax Purposes.

Petitioners assert that their wages and other compensation for labor are not subject to tax because they are not an elected or appointed federal employee.

As the Court stated in Eisner v. Macomber, 252 U.S. 189, 40 S.Ct. 189, 64 L.Ed. 521 (1920), the term “income” is defined for income tax purposes as gain derived from capital, from labor, or from both combined and to include profit gained through the sale or conversion of capital assets. The Court in Merchant's stated, "In determining the definition of the word 'income' thus arrived at, this Court has consistently refused to enter into the refinements of lexicographers or economists, and has approved, in the definitions quoted, what it believed to be the commonly understood meaning of the term which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution."

The Supreme Court of Idaho also stated that the terms used in statutes are given their plain, ordinary meaning. The plain, ordinary meaning of a term can be found in the dictionary definition of the term. See Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993). *Webster's New Collegiate Dictionary* defines “income” as a gain or recurrent benefit usually measured in money that derives from capital or labor.

Contrary to what the Petitioners assert, the courts have consistently held that wages or compensation for labor is income for income tax purposes. Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir. 1986); United States v. Lawson, 670 F.2d 923 (10th Cir. 1982); United States v. Buras, 633 F.2d 1356 (9th Cir. 1980); Mitchell v. Agents of State, 105 Idaho 419, 425 (1983); State v. Staples, 112 Idaho 105, 107 (Ct. App. 1986); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 575 (Ct. App. 1986).

Idaho Code § 63-3011B defines the term "taxable income" to mean federal taxable income as defined under the Internal Revenue Code. The Internal Revenue Code defines taxable income as "gross income minus the deductions allowed under this chapter." The Internal Revenue Code provides that, except as otherwise provided in Subtitle A of the Internal Revenue Code, "gross income means all income from whatever source derived." Idaho has incorporated these provisions in its tax laws.

63-3002. Declaration of intent. It is the intent of the legislature by the adoption of this act, **insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code** relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; **to impose a tax on residents of this state measured by Idaho taxable income wherever derived** and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. **All of the foregoing is subject to modifications in Idaho law** including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Idaho Code § 63-3002 (Emphasis added). As incorporated into the Income Tax Act by Idaho Code § 63-3002, individuals are subject to Idaho income tax on their income from all sources, unless express federal or state exemptions, adjustments, or limitations apply. The Petitioners have not provided any information to establish that their income is exempt under the Internal Revenue Code or under any other law.

3. Idaho has the Jurisdiction to Tax the Petitioners; Petitioners Misconstrue the Buck Act.

The Petitioners claim that the state of Idaho is without the power or authority to impose a tax on them because, according to the Petitioners, they do not live in “the State of” or “this State” of Idaho nor do they live in the “United States.” Idaho has the authority to tax Petitioners. *See People of State of New York, ex rel. Cohn v. Graves*, 300 U.S. 308, 312-13, 57 S.Ct. 466, 81 L.Ed. 666 (1937) "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protections of its laws are inseparable from responsibility for sharing the costs of government."; *Shaffer v. Carter*, 252 U.S. 37, 52, 40 S.Ct. 221, 225, 64 L.Ed. 445 (1920) "[J]ust as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to nonresidents from their property or business within the state, or their occupations carried on therein."

Idaho Code § 63-3024 imposes an income tax on every resident individual measured by his taxable income. Resident is defined in Idaho Code § 63-3013 as any individual who has resided in the state of Idaho for the entire taxable year or who is domiciled in this state. The Idaho Legislature has clearly set forth that the Idaho income tax applies to residents of this state; and the Legislature has defined the term resident. Petitioners, who reside in Idaho, have presented no evidence supporting their claim that they are not residents of, or otherwise subject to the jurisdiction of, Idaho.

The Petitioners also rely on the Buck Act in support of their claim. The Buck Act, 54 Stat. 1059 (76th Congress 1940) (currently found at 4 U.S.C. § 105-110), establishes, inter alia, that no person shall be relieved from state income taxation on the grounds that the person receiving the income resides within a "federal area" or that the income was derived from property or transaction located or occurring in such area. 4 U.S.C.A. § 106 (West 1985). The Act defines the term "State" to include "any Territory

or possession of the United States." 4 U.S.C.A. §110(d) (West 1985). Petitioners' interpretation is inaccurate on its face and without merit.

As discussed above, Idaho Code § 63-3024 imposes an income tax on every resident individual measured by his taxable income. Again, the term "resident" is defined in Idaho Code § 63-3013 as any individual who has resided in this state for the entire taxable year or who is domiciled in the state of Idaho. The Petitioners, who resided in [Redacted], Idaho, during the years in question, have presented no evidence supporting the claim that they are not residents of Idaho.

4. Idaho Has Jurisdiction to Tax Individuals in Idaho.

The Petitioners claim the state of Idaho is without the power or authority to impose a tax on "non-citizen nationals." The gist of the Petitioners' argument is that a convolution of federal terms makes them exempt from the application of Idaho tax law.

Under our federalist system of government, the power to raise revenue to support the functioning of the government [i.e., the power to tax] is generally considered a concurrent state and federal power. The power of the states to tax the income of individuals was first established by the United States Supreme Court in Shaffer v. Carter, 252 U.S. 37 (1920). In that case, Shaffer brought suit to enjoin the state of [Redacted] from collecting any tax assessed against him under the state's income tax law. Although Shaffer was a nonresident of [Redacted], the Court found that the [Redacted] tax on his [Redacted] source income was constitutional. Justice Pitney, writing for the Court, stated:

In our system of government the states have general dominion, and, saving as restricted by particular provisions of the federal Constitution, complete dominion over all persons, property, and business transactions within their border; they assume and perform the duty of preserving and protecting all such persons, property, and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses.

Id. at 51. Justice Pitney went on to write that:

Income taxes are a recognized method of distributing the burdens of government, favored because requiring contributions from those who realize current pecuniary benefits under the protection of the government, and because the tax may be readily proportioned to their ability to pay. Taxes of this character were imposed by several of the states at or shortly after the adoption of the Federal Constitution.

The rights of the several states to exercise the widest liberty with respect to the imposition of internal taxes always has been recognized in the decisions of this court. In *McCulloch v. Maryland*, 4 Wheat. 316, while denying their power to impose a tax upon any of the operations of the federal government, Mr. Chief Justice Marshall, speaking for the court, conceded (pp. 428-429) that the states have full power to tax their own people and their own property, and also that the power is not confined to the people and property of a state, but may be exercised upon every object brought within its jurisdiction saying: "It is obvious, that it is an incident of sovereignty, and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation," etc.

In *Michigan Central R.R. Co. v. Powers*, 201 U.S. 245, the court, by Mr. Justice Brewer, said (pp. 292, 293): "We have had frequent occasion to consider questions of state taxation in the light of the federal Constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over state taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and methods."

That a state may tax callings and occupations as well as persons and property has long been recognized.

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. . . . It [taxation] may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the federal Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."

And we deem [sic] it clear, upon principle as well as authority, that just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its

effect, upon incomes accruing to nonresidents from their property or business within the state, or their occupations carried on therein enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders.

Id. at 51-52. (Citations omitted.) *See also*, People of State of New York, ex rel. Cohn v. Graves, 300 U.S. 308, 312-13 (1937) discussed above.

5. Voluntary Filing and Payment.

Petitioners argue that they have not entered into voluntary withholding agreements with their employer and this makes their withholdings improper. The courts have rejected the argument that the obligation to file returns and pay income tax is voluntary. While both the federal and Idaho tax laws are based on honest and forthright self-reporting, this does not support the argument that these laws are optional. Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988); United States v. Witvoet, 767 F.2d 338, 339 (7th Cir. 1985).

6. The Tax Commission has not only the Authority, but also the Duty, to Examine Returns, Determine Correct Amount of Tax and Issue Notices of Deficiency Determination.

Petitioners assert that the Commission has no legal authority to send out a Notice of Deficiency absent a valid self-assessment.

In the event a person fails to file a proper tax return or to pay the proper amount of individual income tax, Idaho law specifically provides the Commission with the authority to issue a Notice of Deficiency Determination. For the years 2002, 2003, and 2004, however, Petitioners did file their income tax returns that showed taxes due instead of a refund. Petitioners show no valid reason to change the previously filed returns.

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall,

immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery . . .

The Idaho income tax filing requirements are set out in the Idaho statute. Idaho Code § 63-3030 provides that every resident who has gross income, as defined by the Internal Revenue Code, exceeding a specified dollar amount is required to file an Idaho individual income tax return. Persons who are required to file an Idaho individual income tax return must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024.

CONCLUSION

The Petitioners filed returns for 2002, 2003, and 2004 and did not dispute the taxes due and payable for each year including the amounts listed on their W-2(s). In the original returns the Petitioners correctly acknowledge they had income and they were domiciled in Idaho and subject to Idaho income tax laws. The Commission then received amended returns dated September 6, 2005, which showed miscalculated refund amounts for 2002, 2003, and 2004. Petitioners request the refunds based upon unfounded and illogical arguments. All of the arguments made by Petitioners are those commonly made by those who do not want to pay their taxes. Petitioners do not have a valid reason to avoid payment of their taxes. Petitioners' arguments and reasons have no basis in law or fact. The Commission repeatedly in the past has addressed and rejected similar arguments and will do so now as required by law.

WHEREFORE, the Notice of Deficiency Determination dated December 20, 2005, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioners shall not receive the refunds requested.

An explanation of the Petitioners' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.

[REDACTED]

Receipt No.
